IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3933 OF 2007

WITH

WRIT PETITION NO.3987 OF 2007

Bhanwarlal Motilal Doshi .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.S.U.Kamdar with Mr.C.N.Gole for petitioner

Mr.K.K.Singhvi, Senior Advocate with Ms.Madhavi Tavnandi for respondent Nos. 4 to 7.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th September 2007.

P.C.

. Rule. Respondents waive service. By

consent Rule made returnable forthwith.

2. This petition is directed against the order passed by the President of the Slum Clearance Tribunal on 13th December 2006 in Appeal No.26 of 2005.

3. The impugned order was passed pursuant to the directions of this Court and on remand. The above Appeal was preferred by the contesting respondent Nos. 4 to 7 in Writ Petition No.3933 of 2007 challenging the declaration of the area as a Slum Area under the Maharashtra Slum (Improvement, Clearance and Re-development) Act, 1971.

4. Mr.Kamdar learned Counsel appearing for petitioners does not challenge the order of the President to the extent that it remands the case\matter back to the competent authority but he impugns the directions issued while remanding

the case. He submits that the directions in the operative order of sub-clauses (a), (c) and (d) would make it impossible for the competent authority to declare the area as slum. He submits that the well settled principle is that none can control the exercise of a discretion by competent authority much less by a judicial order. Neither a Administrative nor judicial order can direct that the competent authority should exercise its discretion in a particular manner. In such circumstances and when the statute does not provide for pre-decisional hearing to all occupants and concerned person, the scope of the enquiry cannot be widened by such sweeping directions.

5. Mr.Singhvi, learned Senior Counsel appearing for original appellants\respondents Nos. 4 to 7 before me submits that the impugned order does not require any interference under Article 227 of the Constitution of India as the

President was well within his powers to issue said directions. All that the President has ensured is compliance with the principles of natural justice when the property is being declared as slum. In these circumstances, no interference is permissible when the order is not suffering from any error on the face of record nor can be termed as perverse. Consequently, the petition be dismissed.

6. I have perused the impugned order and the direction, with the able assistance of the learned Counsel for both sides. The directions which are subject of some dispute can be conveniently reproduced hereunder :-

> "(a) Respondent Competent Authority shall issue show cause notice to all the Appellants and all the occupants and the interested, affected and concerned persons and parties in respect of the

said area;

(c) The Respondent Competent Authority shall give intimation to the appellants and concerned parties before proceeding for site inspection;

(d) The respondent Competent Authority shall also give opportunity of hearing to the appellant and all the concerned parties and to produce necessary documents and materials."

7. In my view, there is substance in the complaint of Mr.Kamdar that when there is a Registered Body of occupants which was representing the occupants and residents of the slum area in question. In the Appeal before the President, then, in the facts and circumstances of the present case, the President could not have directed that individual notices be issued to the

occupants. Even otherwise, there is substance in the complaint that the direction is rather vague. Once the notice is directed to be issued to the occupants, then, one fails to understand what does the learned President means by the words "Interested, affected and concerned persons and parties".

8. Ultimately, persons residing in the slum structures or the areas are the affected persons. There may be cases where somebody else is required to be given notice. However, that is not clear from the directions.

9. In such circumstances, directing individual notice when there is representative body of occupants appearing before the Appellate Tribunal, was wholly unnecessary. Similarly, for the site inspection, once again directing notices to be issued individually would delay the entire exercise. The President ought to have been aware

of the fact that the powers, even discretionary, have to be exercised within the four corners of the Statute and the Rules in question. One cannot sub-plant or substitute anything which the Statute expressly does not provide. While, it may be permissible to read into the statute, principle of natural justice in a particular case, but, while doing so, it is not permissible to enlarge the ambit and scope of the enquiry by including in it persons unconnected therewith. The sweeping and wide directions of the nature issued in the present case are likely to create confusion. The learned President ought to have indicated very clearly as to whether the competent authority is at all obliged to give a hearing to all concerned, viz., the owners and all occupants or whether the provisions of an Appeal being provided by the Statute, by necessary implication, hearing is ruled out at the pre-decisional stage. Thus, without indicating in any manner as to whether such is

the mandate of the statute or otherwise, the learned President ought to avoided issuance of sweeping directions.

10. These observations had to be made by me because Mr.Kamdar brings to my notice that in case the number of occupants exceeds 100 or 1000, then, the competent authority may take months and year to complete the exercise of issuing individual notices as contemplated. The Legislature never intended that the exercise should be delayed endlessly so that the purpose of inserting provisions which are beneficial in nature is wholly defeated. Learned President, hereafter to issue such directions with caution and should justify them by cogent reasons. I do not want to in any manner lay down principles which would guide him in all cases and control his authority in that behalf. Ultimately, everything would depend upon the facts of each case.

11. In the present case, the directions can safely be modified by directing that the notice contemplated by the directions would be issued through the registered body represented by the petitioner before me and a copy thereof shall be pasted at a prominent place in the area so as to bring to the notice of all concerned occupants that the exercise contemplated in the notice is likely to be undertaken and that they are permitted to appear at a site inspection, if one is to be held. Therefore, the impugned order is maintained with all directions, save and except stating therein that the notice contemplated shall be issued to the petitioner and a copy thereof shall be pasted at a prominent place in the area. No individual notice need be given to the occupants. Rule is made absolute to the above extent. Petition disposed of. No costs.

(S.C.DHARMADHIKARI, J)